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Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 188

EDWARD H. TITUS,
Petitioner,

vs.

LOU C. WALLICK.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

MOTION TO PRINT ABBREVIATED RECORD.

THOMAS I. SHERIDAN,
AARON FRANK,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938.

No. 188

EDWARD H. TITUS,

Petitioner,

vs.

LOU C. WALLICK,

Respondent.

MOTION TO PRINT ABBREVIATED RECORD.

To the Supreme Court of the United States and the Honorable Justices Thereof:

Comes now Edward H. Titus, petitioner in the above entitled cause, by his attorneys, Thomas I. Sheridan and Aaron Frank, and moves this Honorable Court for an order to print an abbreviated record herein consisting of the following parts of the record filed in this cause with the Clerk of this Court on the 8th day of July, 1938:

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1. Transcript of docket and journal entries, Court of Common Pleas, Franklin County, Ohio	1–7
2. Transcript of docket and journal entries from the Court of Appeals, Franklin County, Ohio	210, 211, 214

	Record pages.
3. Transcript of docket and journal entries, Supreme Court of Ohio	239, 240
4. Petition of Edward H. Titus, plaintiff, filed in the Court of Common Pleas, Franklin County, Ohio, on August 20, 1934	8, 9
5. Exemplified copies of the following, annexed to said petition, together with certification with respect thereto	10-31
Summons in the action commenced in the New York Supreme Court, County of New York, by Edward H. Titus, plaintiff, vs. Lou C. Wallick, defendant.	
Second amended complaint in said action.	
Second amended answer in said action together with Exhibit A annexed thereto.	
Final judgment, with notice of entry, in said action, dated May 1, 1934, confirming Referee's report filed in the office of the Clerk of the County of New York on March 29, 1934, and granting judgment in favor of Edward H. Titus, plaintiff, against Lou C. Wallick, defendant, in said action in the Supreme Court of the State of New York, New York County, in the sum of $389,103.21.	
6. Summons issued on August 20, 1934, by the Clerk of the Court of Common Pleas, Franklin County, Ohio, in suit commenced in said court by Edward H. Titus, plaintiff, vs. Lou C. Wallick, defendant, and sheriff's return thereof	32
7. Alias summons issued on September 7, 1934, by the Clerk of the Court of Common Pleas, Franklin County, Ohio, in suit commenced in said court by Edward H. Titus, plaintiff, vs. Lou C. Wallick, defendant, and sheriff's return thereof	33

	Record pages.
8. Answer filed in the Court of Common Pleas, Franklin County, Ohio, on October 6, 1934, by Lou C. Wallick, defendant	43, 44
9. Motion and memorandum filed in the Court of Common Pleas, Franklin County, Ohio, on October 26, 1934, by Edward H. Titus, plaintiff, to strike defendant's answer from files as frivolous and interposed solely for purpose of delay	45–47
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11. Entry and order filed on November 23, 1934, overruling plaintiff's motion to strike from the files the answer interposed in the above entitled action by defendant	52
12. Defendant's amended answer filed on October 17, 1935	69, 70
13. Defendant's amendment to amended answer filed on November 8, 1935	73
14. Plaintiff's answers to interrogatories, submitted with the amended answer of the defendant filed by plaintiff on December 7, 1935	78, 79
15. Plaintiff's reply to defendant's amended answer filed on January 14, 1936	86, 87
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18. Plaintiff's motion for a new trial filed on April 24, 1936	183

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19. Plaintiff's motion filed on April 24, 1936, requesting the trial court to rule upon the admissibility of plaintiff's Exhibit D and defendant's Exhibits Nos. 1 to 8, inclusive, and further, that the trial court rule upon the motions made by plaintiff at the close of defendant's evidence and at the close of all of the evidence	184
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22. Plaintiff's motion requesting the trial court to amend its findings of fact by finding whether a reassignment of the claim was made by Walter L. Titus to plaintiff on December 1, 1925, and whether defendant had knowledge of a reassignment, said motion being filed on October 24, 1936	191
23. Entry and order filed on December 3, 1936, overruling plaintiff's motion requesting the trial court to amend its findings of fact	192
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25. Plaintiff's amended notice of appeal filed on December 12, 1936, from final order and judgment rendered herein by the Court of Common Pleas, Franklin County, Ohio	198–200
26. Entry filed on February 24, 1937, correcting the entry and final order and judgment herein of December 3, 1936, and entering same *nunc pro tunc*	203–209
27. Plaintiff's assignments of error filed with the Court of Appeals of Franklin County, Ohio	218, 219
28. Entry and order of the Court of Appeals of Franklin County, Ohio, filed February 14, 1938, affirming the judgment herein of the Court of Common Pleas of Franklin County, Ohio	235
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31. Plaintiff's notices of appeal to the Supreme Court of Ohio from judgment rendered herein by the Court of Appeals of Franklin County, Ohio, said notices of appeal being filed on March 4, 1938, in said Court of Appeals of Franklin County, Ohio, and in the Supreme Court of Ohio	238, 241

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32. Plaintiff's assignments of error filed in the Supreme Court of Ohio on March 8, 1938	242-244
33. Plaintiff's motion in the Supreme Court of Ohio for an order directing the Court of Appeals, Franklin County, Ohio, to certify its record to the Supreme Court	245, 246
34. Defendant's motion to dismiss plaintiff's appeal as of right, for the reason that no debatable constitutional question is involved in the case	247
35. Entry and order made by the Supreme Court of Ohio on April 27, 1938, overruling plaintiff's motion for an order directing the Court of Appeals of Franklin County, Ohio, to certify its record, set forth in Journal Entries	240
36. Judgment entry of the Supreme Court of Ohio made on April 27, 1938, ordering and adjudging that plaintiff's appeal, filed as of right herein, be dismissed, for the reason that no debatable constitutional question is involved in the cause herein, and further ordering and adjudging that defendant recover from plaintiff his costs and that a special mandate be sent to the Court of Common Pleas of Franklin County, Ohio, to carry said judgment into execution, set forth in Journal Entries	240
37. Bill of exceptions, filed on December 18, 1936, in the Court of Common Pleas of Franklin County, Ohio, setting forth the proceedings at the trial of the cause herein on January 20, 1936	89-111
38. From bill of exceptions, filed in the Court of Common Pleas of Franklin County, Ohio, setting forth notice to take depositions, dated January 21, 1936; and setting forth further the depositions of Louis W. Severy and Edward H. Titus, plaintiff	112-127

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39. The opinion rendered by Mr. Justice Edward J. McGoldrick on April 13, 1934, confirming Referee's report and preliminary to submission of final judgment of May 1, 1934, said opinion being set forth on page 881 of defendant's Exhibit 5, consisting of the record on the appeal taken by defendant from final judgment in plaintiff's favor in the Supreme Court of the State of New York ..... 148, folios 2641 to 2643

40. Exemplified copies, and certificate of the Clerk of the County of New York pertaining thereto, of the order of the Appellate Division of the Supreme Court of the State of New York, First Department, affirming the judgment of the Supreme Court, New York County, in favor of plaintiff herein and against defendant herein, which judgment was entered on the first day of May, 1934, said order being made on May 24, 1935; and of the judgment entered on said affirmance in the office of the Clerk of the County of New York on June 5, 1935; said exemplified copies constituting plaintiff's Exhibit B 128–131

41. Statement under Rule 234 contained in defendant's Exhibit 4, on page 1 thereof, pertaining to the action in the Supreme Court of the State of New York wherein Edward H. Titus was plaintiff and Lou C. Wallick was defendant, said Exhibit 4 consisting of the record on the appeal taken by defendant from final judgment in plaintiff's favor in the Supreme Court of the State of New York ..... 147, folios 1 to 5

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42. Defendant's Exhibit 7 at the trial herein, constituting an affidavit sworn to on August 17, 1934, by plaintiff herein, said affidavit having been interposed on September 7, 1934, in an action in the Supreme Court of the State of New York, New York County, wherein plaintiff herein was defendant and one London I. Wallick was plaintiff; together with certification of the Clerk of the County of New York with respect thereto 151-16

43. Instrument of assignment executed by Edward H. Titus, plaintiff, on March 31, 1924, constituting defendant's Exhibit 8 at the trial herein 165

44. Agreement dated December 1, 1925, between Walter L. Titus and plaintiff herein, constituting plaintiff's Exhibit E at the trial herein, said Exhibit E being the original of said agreement and plaintiff's Exhibit D at the trial herein, being an executed copy thereof 137-142
and envelope, constituting plaintiff's Exhibit F 143

45. Excerpt from testimony given by plaintiff herein upon cross-examination during the first trial held in the Supreme Court of the State of New York, said excerpt being contained in defendant's Exhibit 1 herein, and consisting of the last question at folio 399, the answer thereto appearing at folio 400 and the first question and answer appearing at folio 400, inserting after the word "he" in the last answer, the name London I. Wallick in parentheses, said folios, further, being contained in pages 133 and 134 of the Case on Appeal contained in said defendant's Exhibit 1, said Case on Appeal consisting of the record of the proceedings had on the first trial

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held in the Supreme Court of the State of New York wherein Edward H. Titus was plaintiff and Lou C. Wallick was defendant ..... 144, folios 399 and 400 of second Case on Appeal in said Exhibit

46. Judgment rendered in the Supreme Court of the State of New York on December 29, 1926, and entered on January 3, 1927, in favor of defendant and against plaintiff, said judgment being set forth on pages 41 to 43, inclusive, of the Case on Appeal set forth in defendant's Exhibit 1, said Case on Appeal consisting of the record of the proceedings had on the first trial held in the Supreme Court of the State of New York wherein Edward H. Titus was plaintiff and Lou C. Wallick was defendant ..... 144, folios 121–127 of second Case on Appeal in said Exhibit

47. Opinion rendered by Mr. Justice Proskauer prior to the making of said judgment of December 29, 1926, said opinion being set forth on pages 371 to 379, inclusive, of the Case on Appeal set forth in defendant's Exhibit 1, said Case on Appeal consisting of the record of the proceedings had on the first trial held in the Supreme Court of the State of New York wherein Edward H. Titus was plaintiff and Lou C. Wallick was defendant ..... 144, folios 1111–1136 of second Case on Appeal in said Exhibit

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48. Interlocutory judgment entered on April 2, 1928, upon reversal by the Appellate Division of the Supreme Court of the State of New York, First Department, of the judgment dismissing plaintiff's complaint entered in the office of the Clerk of the County of New York on January 3, 1927, set forth on pages 53 to 56, inclusive, of defendant's Exhibit 1, consisting of the record on the appeal taken by plaintiff from an order granting a second trial in the Supreme Court of the State of New York 14

folios 158-16

49. Defendant's notice of motion dated February 14, 1929, for an order setting aside the judgment entered for the plaintiff and against defendant in the office of the Clerk of the County of New York on April 2, 1928, and moving, further, for a new trial, said notice of motion being set forth on pages 7 and 8 of the defendant's Exhibit 1, consisting of the record on the appeal taken by plaintiff from an order granting a second trial in the Supreme Court of the State of New York ..... 144.

folios 19-24

50. Memorandum of agreement of November 23, 1925, between London I. Wallick and plaintiff, set forth on page 35 of defendant's Exhibit 1, consisting of the record on the appeal taken by plaintiff from an order granting a second trial in the Supreme Court of the State of New York ..... 144.

folios 104, 105

51. Affidavit of Frank F. Gentsch dated March 9, 1929, submitted by defendant in support of said motion for a new trial, said

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affidavit being set forth on pages 115 to 122, inclusive, of defendant's Exhibit 1, consisting of the record on the appeal taken by plaintiff from an order granting a second trial in the Supreme Court of the State of New York ..... 144, folios 343–366

52. Order made on May 31, 1929, by Mr. Justice Louis A. Valente granting defendant's motion for a new trial, said order being set forth on pages 2 to 6, inclusive, of defendant's Exhibit 1, consisting of the record on the appeal taken by plaintiff from an order granting a second trial in the Supreme Court of the State of New York 144, folios 5–18

53. Opinion of Mr. Justice Louis A. Valente upon granting defendant's motion for a new trial, set forth on pages 170 to 177, inclusive, of defendant's Exhibit 1, consisting of the record on the appeal taken by plaintiff from an order granting a second trial in the Supreme Court of the State of New York ..... 144, folios 510–530

54. Excerpt of testimony given by plaintiff upon the second trial held in the Supreme Court of the State of New York, said excerpt being contained in defendant's Exhibit 3 herein and consisting of the last question at folio 489, questions and answers appearing at folio 490 and the first two questions and answers appearing at folio 491, being contained on pages 163 and 164 of defendant's Exhibit 3, referring to the cross-examination of plaintiff, consisting of the record on the appeal taken by the defendant to the Court

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of Appeals of the State of New York from interlocutory judgment entered in the Supreme Court of the State of New York after the Appellate Division of the Supreme Court of the State of New York, First Department, reversed judgment in favor of defendant after a second trial in the Supreme Court of the State of New York .....

folios 489-

55. Judgment rendered on January 26, 1931, in the Supreme Court of the State of New York in favor of defendant and against plaintiff and dismissing plaintiff's complaint in said action in the Supreme Court of the State of New York, said judgment being set forth on pages 52 and 53 of defendant's Exhibit 3, consisting of the record on the appeal taken by the defendant to the Court of Appeals of the State of New York from interlocutory judgment entered in the Supreme Court of the State of New York after the Appellate Division of the Supreme Court of the State of New York, First Department, reversed judgment in favor of defendant after a second trial in the Supreme Court of the State of New York .....

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56. Opinion rendered by Mr. Justice Bernard L. Shientag prior to the entry of said judgment dismissing plaintiff's complaint, said opinion being set forth on pages 766 and 767 of defendant's Exhibit 3, consisting of the record on the appeal taken by the defendant to the Court of Appeals of the State of New York from interlocutory judgment entered in the Supreme Court

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of the State of New York after the Appellate Division of the Supreme Court of the State of New York, First Department, reversed judgment in favor of defendant after a second trial in the Supreme Court of the State of New York ..... 146, folios 2296–2300

57. Judgment of reversal entered on March 16, 1932, said judgment being an interlocutory judgment in favor of plaintiff and against defendant and reversing said judgment made by Mr. Justice Shientag on January 26, 1931, said interlocutory judgment of reversal being set forth on pages 784 to 787, inclusive, of defendant's Exhibit 3, consisting of the record on the appeal taken by the defendant to the Court of Appeals of the State of New York from interlocutory judgment entered in the Supreme Court of the State of New York after the Appellate Division of the Supreme Court of the State of New York, First Department, reversed judgment in favor of defendant after a second trial in the Supreme Court of the State of New York ..... 146, folios 2351–2361

58. Order of reversal of February 26, 1932, rendered by the Appellate Division of the Supreme Court of the State of New York, First Department, reversing judgment of January 26, 1931, made by Mr. Justice Shientag, and upon which order was predicated the judgment of reversal of March 16, 1932, said order being set forth on pages 772 to 784, inclusive, in defendant's Exhibit 3, consisting of the record on the appeal taken by the defendant to the

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Court of Appeals of the State of New York from interlocutory judgment entered in the Supreme Court of the State of New York after the Appellate Division of the Supreme Court of the State of New York, First Department, reversed judgment in favor of defendant after a second trial in the Supreme Court of the State of New York 1

59. Exemplified copy, and certificate of the Clerk of the County of New York pertaining thereto, of judgment entered on July 25, 1932, upon affirmance by the Court of Appeals of the State of New York of the interlocutory judgment rendered in the Supreme Court of the State of New York in favor of plaintiff and against defendant herein on March 16, 1932; said exemplified copy constituting plaintiff's Exhibit C at the trial hereof ..... folios 2314-23

60. Order made on April 20, 1933, by Mr. Justice Irwin Untermyer vacating a Referee's report submitted after hearings held subsequent to affirmance of interlocutory judgment in favor of plaintiff in the Supreme Court of the State of New York, said order appearing on pages 2 to 5, inclusive, of defendant's Exhibit 2, consisting of the record on the appeal taken by defendant from the order made in the Supreme Court of the State of New York on April 20, 1933, vacating a referee's report 132-136

61. Opinion rendered by Mr. Justice Irwin Untermyer in support of said order of April 20, 1933, vacating said Referee's report, appearing on pages 142 to 145, in- ..... 145, folios 5-15

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clusive, of defendant's Exhibit 2, consisting of the record on the appeal taken by defendant from the order made in the Supreme Court of the State of New York on April 20, 1933, vacating a referee's report 145, folios 425–435

62. Order made by the Appellate Division of the Supreme Court of the State of New York, First Department, on October 13, 1933, affirming the order vacating Referee's report made by Mr. Justice Irwin Untermyer on April 20, 1933, and ordering, further, that Honorable Jeremiah T. Mahoney be appointed as Referee; said order being set forth on pages 42 and 43 of defendant's Exhibit 4, consisting of the record on the appeal taken by defendant from final judgment in plaintiff's favor in the Supreme Court of the State of New York ..... 147, folios 124–128

63. Certificate of Clerk of the Supreme Court of Ohio 248

1. On the 8th day of July, 1938, petitioner, by his attorneys, filed with the clerk of this Court his petition in proper form, for a writ of certiorari to the Supreme Court of the State of Ohio to review here the order or judgment of that court and the judgment of the Court of Appeals, Franklin County, State of Ohio, supported by brief, and which petition is now pending before this Court.

2. The sole question for adjudication here presented by the petition for certiorari, is whether the Supreme Court of the State of Ohio and the Court of Appeals, Franklin County, State of Ohio, denied to petitioner the title, right,

privilege and immunities, secured to him under Article IV Section 1 of the Constitution of the United States by the failure and refusal to give to the judgment secured by the petitioner against respondent in the Supreme Court of the State of New York, the full faith and credit required to be given said judgment by said Article IV, Section 1 of the Constitution of the United States and the statutes of Congress enacted pursuant thereto and the full faith and credit it had and still has in the State of New York, under the laws of that State. Such failure to accord said judgment of the Supreme Court of the State of New York, full faith and credit under said Article IV, Section 1 of the Constitution of the United States, was predicated on the stated ground that petitioner was not the real party in interest in the Supreme Court of the State of New York and that in failing to disclose such fact, he had procured said judgment by fraud practiced upon the Supreme Court of the State of New York and upon respondent. This presents the sole question and furnishes the principal reason for invoking the jurisdiction of this Court. The Supreme Court of Ohio dismissed petitioner's appeal as of right to that court and granted respondent's motion to dismiss the appeal as of right, on the ground that no debatable constitutional question was involved.

3. On the 8th day of July, 1938, petitioner, by his counsel, filed with the clerk of this Court, as transmitted to his counsel by the clerk of the Supreme Court of the State of Ohio, a copy of the complete record of this case in the Supreme Court of Ohio, bearing proper certificate of the clerk of that court.

4. The copy of the record so filed contains 243 typewritten pages, legal size and approximately 3,000 printed pages of exhibits, amounting in all to approximately 3,240 pages.

5. The cost of printing the complete record and exhibits in the Supreme Court of the State of Ohio, as transmitted under the certificate of its clerk and filed in this Court, would be approximately $6,500, while the printing of only the relevant portions of the record above designated, amounting to approximately 250 pages, will cost not to exceed $500.

6. An examination of this record discloses that it naturally divides itself into two distinct parts: One part concerns itself with the constitutional question which is completely embodied in the relatively small part of the record above scheduled. The other portions of the record are concerned with testimony, pleadings, orders and decisions relating to questions of fact, litigated in the original action in the courts of the State of New York and which were foreclosed to further consideration by the judgment of the Supreme Court of New York, or are concerned with issues of local practice and procedure in Ohio that have been finally and fully determined by interlocutory rulings and orders in the litigation, which have no bearing upon the constitutional question at issue in this Court. The record of the proceedings had in the State of Ohio, with the exception of the aforementioned local practice and procedural matters and exhibits consisting of records of proceedings in the courts of the State of New York, has been incorporated in full in the aforementioned schedule, and such record contains all possibly necessary and relevant portions of the testimony and exhibits in the New York and Ohio proceedings, which in any way tend to have a bearing upon the constitutional question before this Court. With respect to the New York proceedings the aforementioned schedule sets forth the pleadings, the final judgment, various orders of affirmance or reversal, as the case may be, interlocutory judgments, such opinions of the New York

court as are not officially reported and such excerpts from testimony given or affidavits filed in the New York proceedings as affect the question as to whether your moving party perpetrated a fraud upon the New York courts in prosecuting a cause of action against respondent therein. The aforementioned schedule omits reference to testimony and exhibits in the New York proceedings which relate, strictly, to the merits of petitioner's cause of action against respondent or to the proceedings before the referee, relative to the computation of damage, pursuant to which final judgment was rendered in the State of New York. It also omits reference to the proceedings before the second referee whose report was vacated, as well as to subsidiary matters relative to respondent's application for a new trial after the judgment in his favor was reversed for the first time by the Appellate Division. Said aforementioned schedule omits reference to such procedural matters in the Ohio proceeding as relate, among other things, to whether service of the original summons should be set aside, various orders relating to the filing of briefs or amended pleadings, and proceedings relative to interrogatories submitted by defendant with his answer. In summary, the great bulk of the record filed with the clerk of this Court on the 8th day of July, 1938, consists of exhibits offered in evidence in the Court of Common Pleas, Franklin County, Ohio, by respondent, setting forth the printed records on appeal utilized in the New York proceeding and the aforementioned schedule sets forth such portions thereof as are necessary to give a proper background for adjudication with respect to the final judgment rendered in Ohio. Petitioner asks leave merely to proceed on an abbreviated record which will, essentially, omit testimony and exhibits offered in the New York proceeding referable to the merits of the original cause of action or to proceedings before referees.

7. It is our endeavor in making the within motion to avoid the imposition upon this Court of the wholly unnecessary burden of examining and considering a record of unusual and extreme length, in view of our firm conviction that a concise record as herein proposed, will amply and effectually present the entire question under review and that the inclusion of the entire record can serve no useful purpose. Petitioner's counsel, furthermore, are cognizant of this Court's disapproval of lengthy records containing extraneous matter, to which utterance was given in *Texas Pacific R. Co.* v. *Leatherwood*, 250 U. S. 478, at page 482.

8. That the expense to petitioner, if required to print the entire record, would be so burdensome, as to preclude him from appearing before this Court and that he would be thereby disenfranchised from his constitutional rights, after carrying on this litigation for a period of thirteen years, at a tremendous personal expense.

9. On May 31, 1938, counsel for petitioner, practicing in the City of New York, visited the offices of counsel for respondent at Columbus, Ohio, and attempted to arrange for a stipulation for the printing of the material portions of the record, mentioning the items to be included therein as follows: The pleadings in the Ohio action, motion to strike out defenses therein, the minutes of the trial in Ohio, the exhibits offered thereat, excluding, however, the records on appeal used in the courts of the State of New York, the judgments and opinions rendered in Ohio, the notices of appeal and the motions relative thereto, petitioner's requests to the Ohio trial court to make certain findings, together with the trial court's rulings thereon and the pleadings and final judgment in the Supreme Court of the State of New York. At that time respondent's counsel suggested other and additional items to be included in the record by stipulation, but did not agree definitely to enter-

ing into any stipulation. Counsel for respondent suggested that certain unreported opinions in the State of New York be included, together with the order made in the State of New York granting a second trial after judgment of reversal was entered in favor of petitioner in the Supreme Court of the State of New York for the first time. As a basis for possible stipulation with respect to abbreviating the printed record herein to its material portions, counsel for petitioner agreed to include whatever might be desired by counsel for respondent and filed a praecipe with the clerk of the Supreme Court of Ohio on June 1, 1938, which praecipe embodied the items originally suggested by petitioner's counsel, the items suggested by respondent's counsel, as well as certain other items made necessary by reason of the suggestions made by respondent's counsel. Petitioner's counsel caused a copy of said praecipe to be served upon counsel for respondent on June 1, 1938, and counsel for petitioner likewise prepared a proposed stipulation, embodying the items set forth in said praecipe, to be used for the purpose of providing an abbreviated record herein. On June 8, 1938, counsel for petitioner were advised by their correspondent at Columbus, Ohio, that word had been received, in writing, from counsel for respondent that the entire record should be filed herein; and counsel for respondent disregarded the procedure whereby proper stipulation may obviate the necessity for printing an entire record. In view of the failure of respondent's counsel to stipulate for an abbreviated record herein, counsel for petitioner arrived at Columbus, Ohio, on June 10, 1938, for the purpose of preparing and filing a praecipe with the clerk of the Supreme Court of Ohio, calling for the preparation of a full transcript of the record. On said date, counsel for petitioner called at the office of counsel for respondent for the purpose of making further effort with respect to entering into an appropriate stipulation

herein, but he was informed that respondent's counsel was not in Columbus on said day and that he was not expected to return until June 13, 1938. Under the circumstances and by reason of the lapse of time, petitioner herein found it necessary to proceed in accordance with this motion to print an abbreviated record.

Counsel for petitioner believes that in the foregoing has been listed every portion of the record that is, in any manner whatsoever, material to consideration of the constitutional question raised herein and your moving party makes no objection to the inclusion, in the part of the record to be printed, of any other portion of the record shown, or found by this Court, to be material to the determination of the constitutional question.

Respectfully submitted,

THOMAS I. SHERIDAN,
AARON FRANK,
Counsel for Petitioner.

P. S.

SUPREME COURT OF THE UNITED STATES.

No. 188.—October Term. 1938.

Edward H. Titus, Petitioner, *vs.* Lou C. Wallick. } On Writ of Certiorari to the Supreme Court of the State of Ohio.

[February 27, 1939.]

Mr. Justice Stone delivered the opinion of the Court.

The question for decision is whether the Supreme Court of Ohio, by denying recovery upon a judgment procured by petitioner against respondent in the courts of New York, has failed to accord to the New York judgment the full faith and credit which Article IV, § 1 of the Constitution commands.

Petitioner brought the present suit against respondent in the Ohio Court of Common Pleas upon a judgment recovered by petitioner against respondent in the Supreme Court of New York on May 1, 1934. Transcript of the New York judgment for $389,103, duly authenticated in conformity to the Act of Congress, R. S. § 905, 28 U. S. C. § 687, was filed with the petition in the Ohio court. Defenses interposed by respondent, so far as now material, were that petitioner was not the real party in interest in the Ohio suit and that the judgment had been procured in New York by fraud on the court and on respondent, in that petitioner was not the real party in interest entitled to assert the claim litigated in that suit as required by § 210 of the New York Civil Practice Act, and that petitioner, in procuring the judgment, suppressed and withheld that fact from respondent and the New Yo k courts.

The Court of Common Pleas, after a t ial without a jury, sustained these defenses and gave judgment for respondent, which the Ohio Court of Appeals for Franklin County affirmed, with an opinion in which it ruled that the judgment sustaining the defenses did not deny the New York judgment the full faith and credit required by the Constitution. Appeal to the Supreme Court of Ohio assigning as error the denial of full faith and credit to the New York judgment was dismissed on the ground that the case

involved "no debatable constitutional question". 133 Ohio St. We granted certiorari October 10, 1938, the constitutional que presented by the petition being of public importance and the eral right asserted having been ruled upon and denied by the est court of the state. *Matthews* v. *Huwe*, 269 U. S. 262; *To* v. *Ohio*, 273 U. S. 510, 515.

Petitioner brought the New York suit in December, 1925, a ing that he was the owner of a quarter interest in two hun and fifty shares of the stock of an Ohio corporation which resp ent here, the defendant there, had fraudulently appropriated to own use. The relief sought was that respondent be directed to liver to petitioner certificates of stock representing his interest in corporation and to account for the dividends and earnings on stock received by respondent. Respondent appeared person and defended the suit. It was twice tried in the Supreme Co of New York and was five times before the Appellate Division the Supreme Court, 222 App. Div. (N. Y.) 17; 227 App. D N. Y.) 789; 235 App. Div. (N. Y.) 662; 240 App. Div. (N. Y.) 6 244 App. Div. (N. Y.) 789, and once before the New York Court Appeals, 260 N Y. 519, which affirmed a judgment establishing liability of respondent. An accounting, at the end of nine years litigation, resulted in the final judgment sued upon, which w affirmed by the Appellate Division. 244 App. Div. (N. Y.) 789.

The present record discloses that after entry of this judgme London Wallick, a brother of respondent, brought suit in t Supreme Court of New York to recover from petitioner a share the judgment pursuant to a contract alleged to have been enter into by him with London Wallick on or about November 2 1925. In resisting a motion made in that suit for an injunctio restraining petitioner from disposing of the judgment or its pr ceeds, petitioner prepared and filed an affidavit reciting that on before November 23, 1925, he had informed London Wallick tha he had already assigned his interest in the claim against respond ent to his wife and to Walter Titus, his brother, and asserting that "it does not lie within the jurisdiction of this court to enjoin what has already been accomplished".

The assignment by petitioner and a later reassignment of the claim to him were introduced in evidence in the present suit. The assignment, dated March 31, 1924, purported to "sell, a sign, transfer and set over unto" Walter Titus "any and all claims" which

petitioner then had against respondent. The reassignment, described by its terms as an "Agreement", bears date December 1, 1925, prior to the suit brought by petitioner against respondent in New York. It recites that the earlier assignment was made upon an oral agreement that Walter Titus was to "use any funds that might be derived" from the claim to the two hundred and fifty shares of stock to pay certain indebtedness of petitioner and that petitioner "wishes to institute an action against" respondent "to recover said stock." It states that Walter Titus "does hereby sell, assign, transfer and set over" to petitioner "all his right, title and interest" in the claim and appoints petitioner his attorney to collect the claim. It further recites an agreement between the assignor and petitioner that the latter will turn over the proceeds of the claim to the assignor, who agrees, after paying the expenses of collection, to pay over one-half of the net recovery to petitioner's wife, to discharge certain indebtedness of petitioner, and to pay the balance to him.

The Ohio Court of Appeals disagreed with the conclusion of the trial court that petitioner's affidavit in the London Wallick suit conclusively established that petitioner had no interest in the claim prosecuted against respondent in New York. It held that his interest was to be ascertained by examination of the reassignment from Walter Titus to petitioner. But interpreting that document in the light of the New York law it concluded that the reassignment was no more than a power of attorney authorizing petitioner to collect the claim in behalf of Walter Titus and did not operate as an assignment to vest any right or interest in petitioner upon which he could maintain suit in the New York Courts. Upon examination of petitioner's affidavit indicating, as the court thought, that petitioner had construed the reassignment correctly as not transferring to him any right or interest in the claim against respondent, it accepted the affidavit as evidence that petitioner had fraudulently prosecuted the New York suit against respondent with knowledge that he was not entitled to maintain it. The court accordingly affirmed the judgment of the trial court denying recovery, on the ground that the New York judgment, impeachable there for the fraud, was to the same extent impeachable in Ohio.

By R. S. § 905, 28 U. S. C. § 687, enacted under authority of the full faith and credit clause, Article IV, § 1 of the Constitution, the duly attested records of the judgments of a state are entitled to "such faith and credit . . . in every court within the United

States as they have by law or usage in the courts of the State from which they are taken". The jurisdiction of the New York court over the subject matter and the person of respondent, established prima facie by the present record and the duly authenticated record of the judgment, is not questioned. But respondent argues, as the state court held, that under the Constitution and Act of Congress the judgment is entitled to no more credit in Ohio than is accorded to it in New York and that in New York the judgment is impeachable for petitioner's fraud in prosecuting the suit, knowing that he had no interest in the cause of action sufficient to enable him to maintain it.

The right asserted by petitioner to have the New York judgment enforced in the courts of Ohio is one arising under the Constitution and a statute of the United States. And since the existence of the federal right turns upon the legal effect of the proceedings in New York and the validity of the judgment there, the rulings on those points by the Ohio court are reviewable here. *Adams v. Saenger*, 303 U. S. 59, 64. While they involve questions of local law and are of a character such that this court ordinarily reexamines them with deference after they have been passed upon by a state court, its determination cannot be accepted here as decisive if the constitutional command is to be observed, especially as the decision of the state court rests not on the law of its own state or matters peculiarly within its cognizance, but upon the law of another state which is as readily determinable here as in the courts of Ohio.

We do not stop to consider the question much discussed in brief and argument how far the full faith and credit clause precludes the defense that the judgment sued upon in one state was procured by fraud in another, for we think it plain that the present judgment is subject to no such infirmity. It is evident that no fraud was perpetrated on respondent or on the New York courts if the assignment of the claim to petitioner before he brought the suit in New York operated to vest him with such ownership or interest in the claim as would enable him to maintain the suit upon it there. If the assignment had that effect, the facts that it was given for the purpose of enabling petitioner to bring the suit, and that he was bound to account to a stranger to the suit for its proceeds, are immaterial, since neither the court nor respondent was prejudiced by petitioner's failure to disclose them.

Personal Property Law (Consol. Laws, c. 41).

Choses in action, with exceptions not now material, are made fully assignable by the New York statute. Chapter 43, § 41, Consolidated Laws of New York. Section 210 of the New York Civil Practice Act provides "Every action must be prosecuted in the name of the real party in interest, except that . . . a trustee of an express trust . . . may sue without joining with him the person for whose benefit the action is prosecuted." By repeated decisions of the highest court of the State of New York it has long been settled that under these sections any form of assignment which purports to assign or transfer a chose in action confers upon the transferee such title or ownership as will enable him to sue upon it. This is true even though the assignment is for the purpose of suit only and the transferee is obligated to account for the proceeds of suit to his assignor. *Allen* v. *Brown*, 44 N. Y. 228; *Meeker* v. *Claghorn*, 44 N. Y. 349; *Sheridan* v. *Jayne*, 68 N. Y. 30; *McCauley* v. *Georgia Railroad Bank*, 239 N. Y. 514; *Meyers* v. *Credit Lyonnais*, 250 N. Y. 399; *Banca C. I. Trust Co.* v. *Clarkson*, 274 N. Y. 69, 74; *Brown* v. *Powers*, 53 App. Div. (N. Y.) 251; *Birdsall* v. *Reed*, 188 App. Div. (N. Y.) 46.

Here the assignment, which in plain terms purported "to sell, assign, transfer and set over" the chose in action to petitioner, was sufficient under the New York statutes and authorities to give petitioner dominion over the claim for purposes of suit. In that respect its legal effect was not curtailed by the recital that the assignment was for purposes of suit and that its proceeds were to be turned over or accounted for to another. The Ohio court, placing emphasis on the presence of the power of attorney in the assignment, disregarded the words of assignment and gave to the instrument the more restricted effect of a power of attorney. While a power of attorney to sue, standing alone, does not under the New York law operate as an assignment to vest the attorney with such title or interest as will enable him to maintain the suit in his own name, *Spencer* v. *Standard Corporation*, 237 N. Y. 479, the addition of the power to petitioner's assignment did not deprive it of its force and character as an assignment. The use of the power of attorney, once for historical reasons the indispensable adjunct of every assignment of a chose in action, Ames, Lectures on Legal History, 210 *et seq.*, Williston on Contracts, Rev. Ed. §§ 405, 408, did not render the assignment ineffective merely because, by virtue of the statute, its presence is no longer necessary.

Even though petitioner was disingenuous in omitting to r
the reassignment of the claim in his affidavit in the London Wa
suit, and even though there was fraudulent purpose in his fai
to disclose that he still had some interest in the proceeds of
judgment to which London Wallick was asserting a claim, these
cumstances did not impair the previous assignment of the clai
him or deprive him of the authority, already conferred by the
assignment, to maintain the suit. Whether petitioner's transacti
with London Wallick gave the latter any equitable claim to
judgment or its proceeds does not appear, but in any case the ex
ence of such collateral claims does not subject the judgment to
peachment by the judgment debtor. *Matter of Holden*, 271 N.
212, 217.

Respondent also urges that the Court of Appeals rested
affirmance of the judgment of the trial court on the ground th
petitioner was not the real party in interest entitled to maint
the suit in Ohio, and that this is a non-federal ground adequate
support the judgment and is not reviewable here. While the cou
intimated that petitioner was not the real party in interest in Oh
it evidently rested this conclusion upon its opinion that petitio
was not the real party in interest in the suit in New York. I
opinion states that if the assignment "transferred any such leg
or equitable interest or both in his claim to the plaintiff [petitioner
as would entitle him to maintain an action in his own name in Ne
York, then he was a proper party in interest there and a prop
party in interest here."

When a state court refuses credit to the judgment of a sist
state because of its opinion of the nature of the cause of action
the judgment in which it is merged, an asserted federal right
denied and the sufficiency of the grounds of denial are for thi
court to decide. *Huntington* v. *Attrill*, 146 U. S. 657, 684; *Kenn*
City Southern Ry. v. *Albers Commission Co.*, 223 U. S. 573, 59
Kenney v. *Supreme Lodge*, 252 U. S. 411, 415. So far as the cour
rested its decision on its view that the New York assignment con
ferred no right on petitioner to maintain the suit there, it is enough
as we have pointed out, that the petitioner was the real party in
interest entitled to maintain the suit in New York. So far as Ohio
might apply a different rule if the original cause of action were
prosecuted in its courts, that fact is irrelevant to any issue now
presented. The suit in Ohio was not upon the assigned cause of

sion but upon the judgment of which petitioner is the record owner. The suit upon it is upon a different cause of action from that merged in the judgment. *Milwaukee County* v. *White Co.*, 296 U. S. 268, 275. It is the judgment and not the cause of action which gave rise to it for which credit is claimed, and the constitutional mandate requires credit to be given to a money judgment rendered on a civil cause of action in another state, even though the forum would have been under no duty to entertain the suit on which the judgment was founded. *Christmas* v. *Russell*, 5 Wall. 290; *Fauntleroy* v. *Lum*, 210 U. S. 230; *Roche* v. *McDonald*, 275 U. S. 449; *Milwaukee County* v. *White Co.*, *supra*, 277.

Even though the Ohio court might have declined to recognize petitioner as the proper party to sue upon the assigned claim, a suit upon a judgment of another state, by virtue of the Constitution, stands upon a different footing. The Ohio court is not free to withhold from petitioner, the record owner of a judgment valid and enforceable by him in New York, the full benefit of the constitutional command that the judgment shall receive in the courts of Ohio such faith and credit as it is entitled to receive in New York. A state which may not constitutionally refuse to open its courts to a suit on a judgment of another state because of the nature of the cause of action merged in the judgment, *Kenney* v. *Supreme Lodge*, *supra*, 415, obviously cannot, by the adoption of a particular rule of liability or of procedure, exclude from its courts a suit on the judgment.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.